122-360

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1886.

No. 282.

THE ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY, PLAINTIFF IN ERROR,

vs.

ELIAS R. VICKERS.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF ARKANSAS.

FILED SEPTEMBER 2, 1884.

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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the circuit court of the United States for the eastern district of Arkansas, Greeting:

Because in the record and proceedings as also in the rendition of the judgment of a plea which is in the said circuit court before you between the plaintiff, Elias R. Vickers, and the Saint Louis, Iron Mountain & Southern Railway Company, the defendant, a manifest error hath happened, to the great damage of the said St. L., I. M. & S. R'y Co., defendant, as by its complaint appears, we being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do commanded you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and custom of the United States ought to be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 25th day of June, in the year of our Lord one thousand eight hundred and eighty-four, and of the Independence of the United States the one hundred and eighth.

[The seal of the Circuit Court, Arkansas District, U. S. A.]

RALPH L. GOODRICH,
Clerk of the Circuit Court of the United States of America for the Eastern District of Arkansas.

Allowed by—
HENRY C. CALDWELL,
District Judge.

1½ Service of the within acknowledged June 25, '84.
F. W. COMPTON,
Att'y for E. R. Vickers.

The execution of the foregoing writ of error appears from the schedule hereto annexed.

2 Be it remembered that on the 26th day of October, 1883, came into the office of the clerk of the circuit court of the, United States for the eastern district of Arkansas the St. Louis, Iron Mountain and Southern Railway Company, by Dodge & Johnson, Esqs., its attorneys, and filed therein a transcript from the State court entitled Elias R. Vickers against The St. Louis, Iron Mountain

and Southern Railway Company, which is in the words and figures following, to wit:

Transcript from Ouachita Circuit Court.

Copy of the record and proceedings had in the Ouachita circuit court in the case of—

ELIAS R. VICKERS, Plaintiff,
against
THE ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY, Def't.

Complaint at law.

Removed from said Ouachita circuit court to the circuit court
3 of the United States *circuit court* for the eastern district of Arkansas on petition of defendant.

Copy of Complaint.

Ouachita Circuit Court.

ELIAS R. VICKERS, Plaintiff,
against
THE ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY, Def't.

Complaint at law.

The plaintiff, Elias R. Vickers, a citizen of the State of Kentucky, complaining of the defendant, The Saint Louis, Iron Mountain and Southern Railway Company, states—

That the defendant is a railroad corporation organized and doing business in the State of Arkansas, and operating in part in said State of Arkansas its railroad, to wit, The Saint Louis, Iron Mountain and Southern railroad, as its main line and it- branches, one of which is the Louisiana branch, extending from Gurdon station, on said main line, in the county of Clark, in said State of Arkansas, to the town of Camden, in the county
4 of Ouachita, in said State of Arkansas, a distance of about thirty-four miles, and under the laws of [the] State of Arkansas, and by its charter, franchise, privileges, and responsibilities and customs is a common carrier of freight and passengers on and over its said main line and its said Louisiana branch, and was such at and for a long time prior to the date of the injury hereafter complained of by the plaintiff, running its steam locomotives, tenders, cabooses, freight, passenger, and other cars, coaches, and carriages on and over its said main road and branch for the transportation of freight and passengers from, to, and between the several depots, stations, and stopping places on the same for the purpose of profit and gain.

That on or about the 29th day of July, 1882, the plaintiff, having first paid his fare over said Louisiana branch and main line from

the said town of Camden to the city of Little [Rock], in said State of
Arkansas, to the defendant, by and through its agent, at its
5 depot, in said town of Camden, became and was a passenger
on defendant's train, then and there made up of its steam locomotive, tender, caboose, freight, and passenger cars, occupying his seat in the passenger car of said train, the car appropriated and used for the accom-odation and conveyance of passengers; that on said day said train, made up as aforesaid, and employed as aforesaid in the transportation of freight and passengers, as is the custom of common carriers, and as was and had been for a long time the defendant's custom under the management, control, and conduct of defendant's engineers, conductors, agents, and other servants, the plaintiff, being a passenger thereon as aforesaid, was propelled and run at the usual time from defendant's depot, in said town of Camden, in the direction of and to said Gurdon station and towards said city of Little Rock, on said Louisiana branch road, and while a passenger in said coach as aforesaid, being
propelled as aforesaid on the day aforesaid by and through
6 the negligence, carelessness, and utter disregard of the safety
of him and other passengers in said coach then and there being conveyed, of the said engineers, conductors, agents and other servants of defendant then and there being in charge of, control-ing, and conducting the same, the plaintiff received and suffered a great and apparrently irreparable bodily injury, received, brought about, and inflicted then and there by and through the negligence, carelessness, and disregard aforesaid of defendant's engineers, conductors, agents, and servants aforesaid, as follows, to wit: Said train, made up and composed as aforesaid, the plaintiff, being (with others) in said passenger car as aforesaid on said day, having been run as aforesaid on said branch road to [a] point on the same known and designated as Barham's Station, in said county of Ouachita, was then and there
stopped on the main track, and while so stopped said steam
7 locomotive tender and one or more freight cars were detached
from the other freight and passenger cars (the latter being left for the time being standing on said track), and were propelled and run forward beyond the forward switch and turnout then and there being, and then backed or run backwards on the side track then and there being, upon which said side track said locomotive and tender were detached from said one or more freight cars, and propelled and moved forward and placed again on said main track, and immediately, without the usual warning of the blowing of the whistle or ringing of the bell, and without any warning in fact to the plaintiff and other passengers on said passenger coach, and at a time when the noise of a storm of wind and rain then and there brewing and being rendered it impossible for plaintiff and other passengers to hear and distinguish the running of said locomotive and tender, said locomotive and tender managed and controlled by the engineers, conductors, agents, and
servants of defendant as aforesaid, was propelled and run with
8 great and unnecessary force and speed toward and against
the forward one of said cars left standing as aforesaid, striking the same with sudden and violent force and momentum, which

was suddenly and violently communicated to the others of said standing cars, including said passenger car wherein the plaintiff was as aforesaid, and while he was passing from the water-closet therein, being for the use and accommodation of passengers, to his said seat and near the latter, and, by the sudden and violent movement of said passenger coach, occasioned as aforesaid, plaintiff then and there being as aforesaid, was suddenly and violently thrown over and upon the seats in said coach and other unyielding objects, whereby he was then and there sorely hurt, maimed, crippled, and injured in his back, spine, hips, thighs, and other parts of his body and limbs, and rendered helpless and made to suffer great and excruciating pain and anguish, and was only able to pursue
9 his journey by the help and assistance of his fellow-passengers to its destination, the said city of Little Rock, where he arrived on the same day, and from his arrival there for the period of three months, from the immediate effects of said hurts and injury occasioned and inflicted as aforesaid, the plaintiff was confined to his bed and room, under the continuous care of his physician and surgeon, suffering and enduring the greatest pain and anguish of body and mind, and is now, at the date hereof, so maimed and crippled by said hurts and injuries as to be unable to walk without crutches and other extraneous helps, and apparently, and as well as can be determined, has thereby been rendered permanently maimed and a cripple during the remainder of his life, and his physical usefulness to himself and others has thereby been to a great extent destroyed, and thereby the plaintiff has been greatly damaged by the defendant, through the negligence, carelessness, and disre-
10 gard of its said engineers, conductors, agents, and other servants aforesaid, to wit, in the sum of twenty-five thousand dollars.

Wherefore, for his said injuries received as aforesaid by said negligence, carelessness, and disregard as aforesaid, the plaintiff prays judgment against the defendant for said sum of twenty-five thousand dollars, for his costs, and for other relief.

BEARDEN & BUNN,
Attorneys for Plaintiff.

Henry G. Bunn says he is one of the attorneys of the plaintiff in this action; that the plaintiff, Elias R. Vickers, is not in Ouachita county, Arkansas, wherein this suit is instituted, and that he believes the statements made in the above and foregoing complaint are true.

HENRY G. BUNN.

Sworn to and subscribed before me this the 22nd day of February, 1883.

W. K. RAMSEY, *Clerk*,
By J. T. SIFFORD, *D. C.*

11 Endorsement on complaint: Filed before summons was issued, February 22nd, 1883. W. K. Ramsey, clerk, by J. T. Sifford, D. C.

Copy of Summons.

The State of Arkansas to the sheriff of Ouachita county:

You are commanded to summon the St. Louis, Iron Mountain & Southern Railway Company to answer on the first day of the next May term, 1883, of the Ouachita circuit court, a complaint filed against it in said court by Elias R. Vickers, and warn it that upon its failure to answer the complaint will be taken for confessed, and you will make due return of this summons on the first day of the next May term of said court.

Witness my hand and the seal of said court this 22d day of February, 1883.

[L. S.]

W. K. RAMSEY, *Clerk*,
By J. T. SIFFORD, *D. C.*

12 Endorsement on summons: Came to hand Feb'y 22nd, 1883, at 12 m. A. V. Bragg, sheriff, by W. W. Pace, D. S.

STATE OF ARKANSAS, *County of Ouachita:*

On this the 26th day of February, 1883, at the office and depot building of defendant, situated in the town of Camden, Ouachita county, State of Arkansas, I have duly served the within writ of summons by then and there delivering a true copy thereof to N. S. Morse, then and — acting and being agent of the defendants in charge of said office and depot, and controlling defendant's business transacted there, defendant's president & chief officer not being found in said county of Ouachita.

A. V. BRAGG, *Sheriff.*

Service, 50c.

Filed the 7th day of March, 1883.

W. K. RAMSEY, *Clerk*,
By J. T. SIFFORD, *D. C.*

13 *Subpœna for Sam. Black.*

The State of Arkansas to the sheriff of Ouachita county:

You are commanded to summon Sam. Black to appear before the Ouachita circuit court on the 10th day of its next May term, which will be on the 31st day of May, 1883, and testify on behalf of the plaintiff in an action in said court between Elias R. Vickers, plaintiff, and The St. Louis, Iron Mountain & Southern Railway Co., defendant.

Witness my hand and the seal of said court this 13th day of March, 1883.

W. K. RAMSEY, *Clerk*,
By J. T. SIFFORD, *D. C.*

Endorsement on subpœna: Came to hand March 13, 1883, at 12 o'clock m. A. A. Bragg, sheriff, by W. W. Pace, D. S.

THE STATE OF ARKANSAS, } ss:
County of Ouachita, }

I have this 14th day of March, 1883, at Camden, Ark., duly served the within by showing the original and stating the
14 substance therein to the within-named Sam. Black, and by reading the same to him as I am therein commanded.

A. V. BRAGG, *Sheriff,*
By W. W. PACE, *D. S.*

Service, 50c.

Filed this 14th day of March, A. D. 1883.

W. K. RAMSEY, *Clerk,*
By J. T. SIFFORD, *D. C.*

Copy of Subpœna for J. B. Barnwell.

The State of Arkansas to the sheriff of Ouachita county:

You are commanded to summon J. B. Barnwell to appear before the Ouachita circuit court on the 10th day of its next May term, which will be on the 31st day of May, 1883, and testify on behalf of the plaintiff in an action in said court between Elias R. Vickers, plaintiff, and The St. Louis, Iron Mountain & Southern R. R. Co., defendant.

Witness my hand and the seal of said court this 23d day of April, 1883.

[L. S.]

W. K. RAMSEY, *Clerk,*
By J. T. SIFFORD, *D. C.*

15 Endorsements on subpœna: Came to hand April 23rd, 1883. A. V. Bragg, sheriff.

THE STATE OF ARKANSAS, } ss:
Ouachita County, }

I have this 1st day of May, 1883, at 7 p. m., duly served the within by showing the original and stating the substance thereof to the within-named J. B. Barnwell, as I am therein commanded.

A. V. BRAGG, *Sheriff.*

Service, 50c.

Filed this 4th May, A. D. 1883.

W. K. RAMSEY, *Clerk,*
By J. T. SIFFORD, *D. C.*

16 *Petition of Def't to Remove Cause to U. S. C't C't.*

In the Ouachita Circuit Court.

ELIAS R. VICKERS
vs.
ST. LOUIS, IRON MOUNTAIN & SOUTHERN R'Y CO.

The defendant represents that the plaintiff was at the commencement of this suit and is still a citizen of the State of Kentucky; that the defendant is a corporation organized under the laws and operating a railroad in the State of Arkansas, and in the said county of

Ouachita; that the amount in controversy in said cause, exclusive of cost, exceeds the sum of five hundred dollars; and defendant prays that said cause be removed to the circuit court of the United States for the eastern district of Arkansas.

J. M. MOORE, *Att'y.*

Endorsement on application: Filed May 3d, 1883. W. K. Ramsey, clerk, by J. T. Sifford, D. C.

17 *Copy of Def't's Bond for Removal of Cause.*

Know all men by these presents that The St. Louis, Iron Mountain & Southern R'y Co., as principal, J. M. Moore and Geo. E. Dodge, as sureties, are held and firmly bound unto Elias R. Vickers in the penal sum of one thousand dollars, for the payment whereof, well and truly to be made unto the said Elias R. Vickers, his heirs, representatives, and assigns, we bind ourselves, our heirs, representative, and assigns, jointly and severally, firmly by these presents.

Yet upon these conditions the said St. Louis, Iron Mountain & Southern R'y Co. having petitioned the circuit court of Ouachita county, State of Arkansas, for the removal of a certain cause therein pending, wherein Elias R. Vickers is plaintiff and the St. Louis, Iron Mountain & Southern R'y Co. is defendant, to the circuit court of the United States in and for the district of Arkansas:

18 Now if the said St. Louis, Iron Mountain & Southern R'y Co., your petitioner, shall enter in the said circuit court of the United States, on the first day of the October term, 1883, a copy of the record in said suit, and shall well and truly pay all costs that may be awarded by said circuit court of the United States if said court shall hold that said suit was wrongfully or improperly removed thereto, then this obligation shall be void.

Witness our signatures this 2nd day of May, 1883.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY CO,
By J. M. MOORE.
GEO. E. DODGE.
J. M. MOORE.

Approved May 3rd, 1883.

W. K. RAMSEY, *Clerk.*

Endorsement on bond: Filed May 3d, 1883. W. K. Ramsey, clerk, by J. T. Sifford, D. C.

19 Copy of order of removal made by clerk of Ouachita circuit court in vacation:

ELIAS R. VICKERS
vs.
ST. LOUIS, IRON MOUNTAIN, & SOUTHERN RAILWAY CO. } 301.

In vacation of the Ouachita circuit court.

CLERK'S OFFICE, OUACHITA COUNTY, *May 3rd*, 1883.

Now, on this day comes J. M. Moore, attorney for the defendant in this cause, by his petition for removal of same to the circuit court

of the United States for the eastern district of Arkansas, for the reason that the plaintiff is a non-resident of the State of Arkansas, and having presented with said petition the bond of defendant as required by law, with Geo. E. Dodge and J. M. Moore as securities, said bond is approved.

And it is ordered, subject to approval of the honorable circuit court of Ouachita county, that the prayer of said petition is
20 granted and this cause removed to said circuit court of the United States, and that a transcript of all the proceedings and records had herein be made and delivered to the attorney of defendant on or before the first day of the next October term, 1883, of said United States circuit court.

Attest:

W. K. RAMSEY, *Clerk.*

Fee bill:

To W. K. Ramsey, clerk	$4 45
" A. V. Bragg, sheriff	3 20
	$7 65
Fees [for] making and certifying transcript	4 00
	$11 65

STATE OF ARKANSAS, *County of Ouachita:*

I, W. K. Ramsey, clerk of the circuit court in and for said county & State aforesaid, do hereby certify that the foregoing sixteen pages contain a full, true, complete, and perfect transcript of all the record and proceedings had in the case therein mentioned in
21 the Ouachita circuit court,

Given under my hand and the seal of said court at my office this August 8th, 1883.

[L. S.] W. K. RAMSEY, *Clerk,*
By J. T. SIFFORD, *D. C.*

Endorsed: Filed Oct. 26, 1883. Ralph L. Goodrich, clerk, by W. P. Field, D. C.

And on January 16, 1884, the following proceedings were had, to wit:

22 UNITED STATES OF AMERICA,
Eastern District of Arkansas:

Be it remembered that at a circuit court of the United States of America in and for the eastern district of Arkansas begun and holden on Monday, the 22nd day of October, anno Domini one thousand eight hundred and eighty-three, at the United States court-room in the city of Little Rock, Arkansas, the Honorable Henry C.

Caldwell, district judge, presiding and holding said court, the following proceedings were had, to wit. on January 16, 1884:

E. R. VICKERS
v.
ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILROAD COMPANY. } 3583.

Comes the defendant, by Dodge & Johnson, Esqs., its attorneys, and files herein its motion to compel plaintiff to give bond for costs.

Which motion for bond is in the words and figures as follows, to wit:

Mo. for Cost Bond.

U. S. C't C't for East. Dist. of Ark.

ELIAS R. VICKERS *v.* ST. L.; I. MT. & S. R'Y CO.

23 Comes the defendant and moves the court for an order compelling the plaintiff to file his bond for costs herein, and in default thereof that this cause be dismissed.

DODGE AND JOHNSON,
Att'ys for Defendant.

Endorsed: Filed January 16, 1884. Ralph L. Goodrich, clerk.

And on April 15, 1884, as follows:

24 UNITED STATES OF AMERICA,
Eastern District of Arkansas:

Be it remembered that at a circuit court of the United States of America in and for the eastern district of Arkansas begun and holden on Monday, the 14th day of April, anno Domini one thousand eight hundred and eighty-four, at the United States court-room, in the city of Little Rock, Arkansas, the Honorable Henry C. Caldwell, district judge, presiding and holding said court, the following proceedings were had, to wit, on April 15, 1884:

ELIAS R. VICKERS
vs.
ST. LOUIS, IRON MOUNTAIN AND SOUTHERN R'Y CO. } 3583.

Comes the defendant, by Dodge and Johnson, Esqs., its attorneys, and files herein its answer.

Which answer is as follows, to wit:

25 In the United States Circuit Court, Eastern District of Arkansas.

ELIAS R. VICKERS *vs.* ST. L., I. M. & S. R'Y CO.

The defendant, for answer to the complaint herein, says—

That the injury complained of was not caused by any negligence on the part of itself, agents, servants, or employés.

That if the injury was sustained by plaintiff, as alleged in his said complaint, it was contributed to and caused by the negligence of plaintiff.

DODGE & JOHNSON,
Def't's Att'ys.

And on April 30, 1884, the following proceedings were had, to wit:

ELIAS R. VICKERS

vs.

ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY CO.

26 Comes the plaintiff, by F. W. Compton and John T. Bearden, Esqs., his attorneys, and comes the defendant, by Dodge & Johnson, Esqs., its attorneys, and, the parties hereto announcing themselves ready for trial, a jury came, to wit, S. A. Wiggins, R. J. Wilson, W. R. Bell, F. M. Chrisman, Charles A. Butler, W. L. Conley, C. G. Cribbs, D. J. McDonald, C. McIntosh, J. G. Glenn, Winfield Scott, and H. A. Cady, being twelve good and lawful men of the district, who were duly tried, empannelled, and sworn well and truly to try the issues joined between the plaintiff and the defendant and a true verdict give according to the law and the evidence, and thereupon the jury proceed- to hear the evidence, as well on the part of the plaintiff as of the defendant, and having heard all the evidence and argument of counsel, and having been charged and instructed by the court, retired to consult of their verdict, and the trial hereof not being concluded the same is continued until to-morrow morning.

And on May 1, 1884, as follows:

27 ELIAS R. VICKERS

v.

ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY.

Comes the plaintiff, by F. W. Compton and John T. Bearden, Esqs., his attorneys, and comes the defendant, by Dodge & Johnson, Esqs., its attorneys, and come the jury, to wit, S. A. Wiggins, R. J. Wilson, W. R. Bell, F. M. Chrisman, Charles A. Butler, W. L. Conley, C. G. Cribbs, D. J. McDonald, C. McIntosh, J. G. Glenn, Winfield Scott, and H. A. Cady, and the trial hereof not being concluded on yesterday the same is now resumed, and the jury return into court the following verdict: "We, the jury, find the issues for the plaintiff and assess his damages at the sum of six thousand dollars."

It is therefore considered, ordered, and adjudged that said plaintiff do have and recover of and from said defendant the sum of six thousand dollars (6,000.00) for his damages, together with all his costs herein expended, and have execution therefor.

On the margin of which judgment appears the following note, to wit:

MAY 7, 1884.

28 We, Bearden and Bunn and Compton, Battle and Compton, attorneys for the plaintiff, claim a lien on the judgment

in this case for one-fourth the amount of said judgment for services rendered by us in said case.

(Signed) BEARDEN & BUNN.
COMPTON, BATTLE & COMPTON.

Attest: RALPH L. GOODRICH, *Clerk*,
By W. P. FIELD, *D. C.*

And on May 2, 1884, as follows:

ELIAS R. VICKERS

v.

ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY CO.

Comes the defendant, by Dodge and Johnson, Esqs., its attorneys, and by leave of court file herein their motion for a new trial.

Which motion for a new trial is as follows:

In the U. S. Circuit Court, Eastern District of Arkansas.

ELIAS R. VICKERS *v.* ST. L., I. M. & S. R'Y CO.

Comes the defendant, The St. L., I. M. & S. R'y Co., by at-
29 torneys, and prays that the verdict of the jury herein be set aside, and a new trial granted—

1st. Because said verdict is contrary to the evidence.

2nd. Because said verdict is contrary to the instructions of the court.

3rd. Because the verdict of the jury is excessive in amount.

4th. Because the charge of the court to the jury is contrary to law.

DODGE & JOHNSON,
Att'ys for Def't.

And on June 24, 1884, as follows:

ELIAS R. VICKERS.

v.

ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY CO.

On this day is submitted to the court the motion for a new trial herein, and the same is by the court overruled.

And on June 25, 1884, as follows:

30 E. R. VICKERS

vs.

ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY CO.

Now, on this day, in pursuance of leave heretofore granted, the defendant presents to the court its bill of exceptions herein, which is by the court examined, found correct, signed and sealed, and ordered to be made a part of the record herein.

Which bill of exceptions is as follows:

Bill of Exceptions.

E. R. VICKERS *vs.* ST. L., I. M. & S. R'y Co.

The plaintiff, to sustain the issues in his behalf herein, offered the following testimony:

Dr. J. A. DIBRELL, Jr., testified:

I am a practicing physician, & reside in the city of Little Rock. I was called to see plaintiff July 29, 1882, the day after he
31 was injured. He was at the residence of Mr. Colloway, his nephew, in this city. I found him much prostrated, and discovered numerous small bruises on his body. The principal injuries seemed to be on his shoulder and thigh. Upon further examination discovered that he had what we call an inter-capsular fracture of the neck of the thigh bone. The process of healing in such a case is by an interlocking of the fractured parts. It was an impacted fracture, such as seldom occurs to any except persons in advanced life. It healed by ligamentous union and did not knit. It is not necessary that he should suffer pain continually in after life; would be likely to suffer at intervals like rheumatic pains. It made that leg about an inch shorter than the other. This shortening did not occur until six weeks or two months afterwards. His leg is weak and is likely to be so always; any great pressure on it would cause pain. The character of the injury is such as would make him a cripple for life; it would probably cause him to have rheumatic pains in cloudy weather. I had him under
32 observation about three months; have not seen much of him lately. He complained of pain for about two months. When I last saw the injured limb it showed some wasting. He will have to walk with crutches or a cane all the rest of his life. The injury incapacitates him from any life or business such as a carpenter.

E. R. VICKERS, the plaintiff, testified:

In July, 1882, I went to Camden, Arkansas, from my home in Kentucky; was in Camden a week. When I started back on the train of defendant I had bought a ticket and paid my fare. I had with me my little granddaughter. It commenced raining at Chidester. The train stopped at Barham. It was then raining very hard, with thunder and lightning. After the train stopped I thought it a good opportunity to go to the water-closet, and went. The rear door of the car was open and fast against the water-closet door. I unfastened both doors and went into the closet; was in
33 two or three minutes. When I came out I had hold of the door-knob shutting the door. Just then the engine and other cars came against the car I was in with such a shock that I was knocked headlong ten or twelve feet in the aisle. I could not get up. They helped me up. I had no feeling in my right leg, and was helpless. They laid me on cushions. When we got to

Gurdon they wanted to take me to the hotel. I objected, because I did not think I could get proper medical attention there. So I remained in the car until the north-bound train on the main line came along, and was carried and put into the sleeper. The man in charge of the sleeper was very kind to me. I suffered great pain; got along very well until we reached Little Rock. The sleeping-car conductor carried me in his arms and put me in Gleason's Hotel. He was the only one who treated me kindly. My son paid him two dollars. I was taken in a carriage to my son-in-law's; was confined to my room three months. After two months could get about a little on crutches. I was about a month in bed. For
34 three or four months was in pain all the time, and now suffer pain occasionally. When I am still it don't hurt; but in walking if my crutch slips or I bear any weight on my leg it hurts me in the hip; am in that condition now; have to have assistance in dressing and undressing; had to pay a man five dollars per week while here—about three months—and after going to Kentucky had my nephew to help me. When I came back here I paid his expenses here and back for him to wait on me. This amounted to about fifty dollars; doctors' bill I paid sixty-three dollars. I am not able to attend at all to any active business. At the time I was injured I was half owner in a hub and spoke factory at Harrisville, Ky. I was the boss or sup't of the business. I found that I could do all of the work at the turning lathe that we had to pay a man three dollars to do, and so saved that much expense. I cannot do that now; had to sell out my half interest for about half what it was worth, because I couldn't attend to it. The whole thing
35 was worth about eight thousand dollars. I sold out for two thousand dollars; partly on credit.

Cross-examination:

I was sixty-seven years old when injured. I was sixty-nine last month. I weighed one hundred and seventy-five or one hundred and eighty pounds when hurt. I now weigh about the same. I live here now; moved here about four months ago; am a widower. I lived in Camden eighteen years before I moved to Kentucky; traveled over the branch road once before. It was the same kind of car and train—a mixed train. On my way to Camden I remember to have noticed one time when they took on a car with a great shock. We had been standing still at Barham several minutes when I got up from my seat and went to the water-closet; had been standing a few seconds while putting the door shut after coming out. I fell backwards ten or twelve feet. My elbow was all bruised up; suppose it struck a seat. I struck on my right side and
36 shoulder. The injury was caused by falling in the aisle. Dr. Dibrell attended me off and on two or three months; have talked with other doctors, and they all say what Dr. Dibrell says. My shoulder has improved, and my leg somewhat; havn't been to Kentucky since the one visit referred to; havn't been out anywhere since I returned [from] Kentucky but three times; sold my in-

terest in the hub and spoke factory about eight months ago for two thousand dollars. I went intc the business in 1876.

The original investment was	$3,500 00
Added since new machinery	1,200 00
" " warehouse and office	600 00
" " material, say	2,000 00
Total	$7,300 00

When I left Kentucky to go to Camden I left my nephew in charge of the factory. We stopped running about a week before I left, and it stayed stopped until I sold out. I sold to my partner, Joe Carlton, for two thousand dollars; I could have got more, perhaps, from others, but we had an agreement to give either partner the preference in case either wished to sell out. I might
37 have got from others five hundred dollars more.

Redirect:

When I spoke of the car that was taken on with such a shock on my way to Camden, I do not think it occurred at the same place I was afterwards injured—Barham station. It was not railroad men who carried me from the branch train to the sleeper, and from the sleeper to Gleason's hotel; it was Mr. Black and the conductor or porter of the sleeper, and perhaps one of the railroad hands.

Recross-examination:

I have made one trip—round trip—to Camden on the same road before.

Dr. E. R. BENTLEY testified:

I examined plaintiff with Dr. Dibrell about two weeks after the injury. He was quite helpless as to his right side. There was a contusion on right shoulder; could not use his right leg.
38 There was a serious injury to the hip-joint. I was an intercapsular fracture of the neck of the thigh bone. Such injuries seldom fully recover. I saw him afterwards and there was a shortening of the right leg. I am of the opinion that he will never have the use of his leg. Such injuries are usually attended with pain; have not seen him lately. The result will be more or less wasting of the limb. It will be apt to give him pain occasionally in the future.

Cross-examination:

I saw Mr. Vickers two or three times. The last time was a month or so after the injury. My first opinion, that it was a permanent injury, was confirmed by the result.

And, further to sustain the issues herein in his behalf, the plaintiff read in evidence the deposition of Charles R. Barham.

CHARLES R. BARHAM deposed as follows:

39 Am fifty-eight years old and proprietor of the mill at Barham station on the Camden branch of the St. Louis, Iron Mountain & Southern r'y; knew the plaintiff, Vickers; had known him twenty-five or thirty years. At the time the accident occurred to Mr. Vickers the train had stopped at Barham station to take on two cars of lumber for me. The engine and some cars had been detached from the passenger coach in the rear and had gone on to the switch to get my two cars. After getting on these two cars the engine and train backed onto the main track to couple to the passenger coach where it had been left standing. In going back they struck the coach very hard, a great deal harder and with much more force than usual. I am accustomed to notice how they make this coupling. It struck so hard that it attracted my attention particularly this time. It must have driven the passenger coach back at least three feet. It caused me to remark that some times they would hurt or cripple somebody. I referred to brakesman as in
40 danger of being hurt or killed. I am postmaster at B—— station; would not be positive that I saw Mr. Vickers that day or knew he was on the train. The last of the week I came to Camden and heard that Mr. Vickers was on that particular train. I don't remember the date—about twelve months ago. Barham station is in Ouachita county, Arkansas.

Cross-examination:

Have had my mill at that station ever since the branch road was built, and have — constantly shipping lumber from there. All the trains that ever run over that road are mixed trains—that is, freight cars—with passenger coach at rear. At the time referred to the train stopped fifteen minutes. During that time I was getting my bills of lading signed, and was standing talking with somebody on the platform when the train came back against the coach. Mr. Vickers and I are very well acquainted; have never met him on that train, but have known of his going back and forth be-
41 tween Camden and Little Rock. There was nothing unusual done in regard to the taking on cars and switching at that time except that the train came back with unusual force. I saw no one injured on that occasion and didn't know at the time that any one was injured. My assistant at that time was A. C. Dresback.

And the deposition of Marion Lee Ramsey:

MARION LEE RAMSEY deposed as follows:

On July 29th, 1882, I left Camden with my grandfather, Mr. E. R. Vickers, for Little Rock, about 3 p. m., on the Camden branch train. When we reached Barham station the train stopped, and the engine and other cars went ahead, leaving the passenger coach standing still. The engine and cars then backed very suddenly against the coach; it shook everybody in the coach when it struck. My grandfather was standing up in the aisle and

fell flat on the floor. It shook me off the seat. I didn't
42 fall clear down, but caught with my hands on the seat in front of me. I then saw my grandfather lying on the floor; he couldn't move and couldn't get up by himself. The gentlemen in the coach lifted him up and fixed two seats together for a bed and laid him on it. The train then took us on to Gurdon, and we stayed in the coach until the Little Rock train came along. My grandfather was then carried in the sleeper and we went on to Little Rock—they put him to bed in the sleeper. At Little Rock they put him into a chair and took him into a room at Gleason's Hotel. Next morning they took him in a carriage to Mr. Calloway's and put him to bed. I remained there with him six weeks, and during that time he was not able to leave the room. He was up and about the room on crutches *on crutches* a little while before I left, but couldn't get out of bed without assistance. He complained very much of pain just after the accident and afterwards at Mr. Caloway's.

43 Cross-examination:

I didn't know anybody on the train but Mr. Sam. Block. I will be fourteen years old the 28th of next August. I think the car we were in was one of the ordinary passenger coaches; our seat was near the middle of the car. Grandfather was standing near the rear door; it was open—looking out to see if it had stopped running. The coach stood still at that station about fifteen or twenty minutes before it started again. I heard the engine coming back, but did not think it was coming back with such force.

And the deposition of Samuel Block.

SAMUEL BLOCK deposed as follows:

I was a passenger on the train from Camden to Gurdon in July, 1882, at the time of the accident to E. R. Vickers, whom I knew well. The train stopped at Barham's station, and the engine and
44 some of the cars were detached from the express car and passenger coach, and switched off to get a couple of cars loaded with lumber, which were standing on the side track, and leaving the express car and passenger coach standing on the main track. It was raining, thundering, and lightning at the time. I was sitting in the express car, which was immediately in front of and attached to the passenger coach, on a seat that run lengthways the car, and Mr. Barnwell, the messenger, was sitting by my side. The engine and cars came back with such great force that when they struck the express car Barnwell and myself were thrown violently from our seats upon the floor, and the express packages and mail-bags were thrown about in great confusion. My first impression was that the car had been struck by lightning. I got up and went into the passenger coach, and there found Mr. Vickers lying on the floor, unable to get up, and seemingly in great pain. Several of us fixed two seats together, and in that condition he was taken on to Gurdon, a distance of some fifteen miles, where he was lifted out by us
45 and carried to the sleeper on the main line of the Iron Mountain road and started to Little Rock. Mr. Vickers suffered

very much, and complained of great pain. I did not examine his injuries. I did not go on the train with him beyond Gurdon.

(Signed.) S. BLOCK.

Which was all the testimony introduced by plaintiff.

And the defendant, to sustain the issues in its behalf, introduced the following testimony:

J. B. McGAUGHEY, a witness of lawful age, testified as follows:

I was conductor of the train on which plaintiff was hurt. We stopped at Barhams' station to take on a car of lumber. I made out the bill of lading and stepped on [the] platform of passenger coach to keep out of the rain. While I was doing this my two brakesmen, one of them my brother, were attending to the switching in and taking on the car of lumber. It was a mixed
46 train, the only kind we ever run on the Camden branch, composed of freight cars with a passenger coach attached to the rear. It was raining very hard; so hard we could scarcely see to do anything. The first time the engine and cars came back to couple onto the coach they failed to make the coupling; had to try twice. The first time they came back with rather a hard jar; have made as hard ones as that many a time. I was standing in the front door of the coach. I was not thrown down by the jar, but it caused me to rather run than fall toward the door of the baggage car just opposite. My back was towards Mr. Vickers. When I went back some of the passengers had helped him up and put him in the seat. I heard that he was hurt, and went back to see what was the matter. I am familiar with the running of cars; have ran all kinds of trains. There is always more of a shock in coupling freight cars than passenger cars. The reason is that the passenger cars are provided with couplers and buffers, and there is not so much
47 slack. There is more play in the coupling of freight cars with pins and links; the links are about eight inches long. I didn't consider it more than an ordinary jar for a freight train, but it was a little harder than I would want to make with a passenger coach on. I have often made as hard jars with freight trains. I was standing waiting for the car to be put on. I don't remember if the bell was ringing; it is customary to do so. There was nothing in this instance to attract my attention to the ringing of the bell.

No cross-examination.

THOMAS ROBERTS, a witness for defendant, testified as follows:

I was one of the brakesmen on the train. We went into the side track and got the car of lumber and backed up to couple onto the passenger coach, which we had left on [the] main track. I was not doing anything, but standing still waiting to give the signal to the engineer to stop when he backed far enough. I gave the signal with my hand. I was standing
48 with my back to the engine on the fireman's side. Tom McGaughey was standing ready to put in the pin and make the

coupling. He did not make it when the train came back the first time, but s-epped out to one side as the train came back against the coach. The cars came together a little harder than usual. It may have been a little down grade; don't know whether the brakes were set or not. The coach was knocked back six feet or so. It was raining as hard as I ever saw it, and had been for ten minutes. There was nothing about the cars broken by the shock. We were at Barham station ten or fifteen minutes. I did not know that the accident had happened until I heard of it afterwards. I am now in the employ of the Texas and St. Louis R. R., and have been for seven months past. John McGaughey is in the employ of the same company. Robertson was engineer. It is impossible to couple freight cars without more or loss of a shock. There is six or eight inches slack or play between each car. The passenger cars
49 come closer together because of the buffer.

No cross-examination.

In answer to questions by the court witness further states: There was a "Miller buffer" on the passenger coach, but not on the freight cars. The caboose was next in front of passenger coach. The coupling was same as in freight cars. I do not know why Tom McGaughey stepped out from between the cars as they came back the first time.

J. PURSEN, a witness for defence, testified as follows:

I was fireman on the train in question. James Robinson was the engineer. I was sitting on the left side of the cab, in the proper place for fireman. The rain *rain* was pouring in torrents, and could not see more than a car length or two ahead. I was ringing the bell and looking out for a signal. We backed the first time, and the only way we knew that the coupling had not been ma*id*
50 was by getting a signal to try again. The first time when we backed I saw the signal to stop, and I told the engineer. He reversed the engine at once, and just at that moment we struck the coach. I didn't feel any more than an ordinary jar. We then made the coupling at once, when we came back the second time, and moved on. I didn't know anything had happened. I was ringing the bell. It is the duty of both engineer and fireman to ring the bell.

Cross-examination:

We made two efforts to couple and didn't succeed the first time. Just a few second- after I told the engineer to stop the jar occurred.

ROBERT WHITE, for defence, testified:

I was baggage-master and express agent on the train in question. I was standing in the rear door of the caboose, just opposite the front door of the coach. The conductor was standing in that door. I was talking to him and looking into the coach. I had no-
51 ticed Mr. Vickers standing in the rear part of the coach. I saw him fall backwards and helped take him up. I had a

note for the conductor, and wanted him to come to me and get it. I did not want to take it to him, because I did not want to get wet. The shock did not *not* knock me down. An empty water barrel in the caboose was knocked over. I didn't catch hold of it or anything to keep from falling. I don't know how long Mr. Vickers had been standing where I saw him. There was nobody else hurt. I didn't see anybody else fall. I had run eight or nine months on the Camden branch. The jar in making this coupling was somewhat greater than usual. I don't know whether Mr. Vickers had hold of anything. I have noticed harder jars in switching in yards. Mr. Vickers was standing erect. I had known him for many years.

Cross-examination:

I don't remember about the bell ringing. It is such a
52 usual occurrence I am not apt to notice it.

CHARLES WHITE, for defense, testified:

I was a passenger, sitting about the middle of the car nearly opposite to Mr. Vickers. I was sitting facing the rear end of coach. My wife was sitting opposite me—facing me. I saw Mr. Vickers when he got up and went back. It was five or ten minutes from the time he went back until the shock came. I don't know how long after he came out of the water-closet this was. He was standing a little sideways—about to go to his seat. I don't know how he fell, except that he fell on his side. I was the first one to get to him. I had been on the Camden branch a few times before. The shock was greater than usual; I don't know how much greater.

No cross-examination.

And this was all the testimony offered by either party.
53 The court then proceeded to charge the jury as follows:

Charge.

The plaintiff while travelling as a passenger on the defendant's train was injured. To recover compensation for such injury this suit is brought.

1. Before the plaintiff can recover he must satisfy you that *that* the injury of which he complains was caused by the negligence of the defendant's agents and employees, but if the injury occurred while the plaintiff was a passenger on the defendant's train and while he was in the exercise of ordinary care, which is that degree of care that a person of reasonable prudence and intelligence would exercise under like circumstances or in a like situation, then the injury to the plaintiff under such circumstances is *prima facie* evidence of negligence on the part of the defendant, which renders it liable. In such case the plaintiff is not required to show by
54 what particular act of misconduct or negligence on the part of the defendant the injury occurred.

2. The plaintiff had a right to leave his seat to go to the water-closet as occasion required, whether the train was standing still or in motion, and if the injury complained of was received while the

plaintiff was returning from the water-closet and while he was in the exercise of ordinary care and prudence, then the defendant is liable, unless it has shown you affirmatively that there was no misconduct or mismanagement or negligence on the part of the defendant's agents conducting the train.

3. If you are satisfied from the evidence that the plaintiff was not guilty of any negligence and that the injury was the result of bringing the cars together with unusual force and violence for the purpose of coupling them, the defendant is liable.

This is not a case in which the jury can give vindictive or exemplary damages, or, as it is somtimes called, "smart money."

55 If you find the defendant is liable for the injury the plaintiff received, you can only allow him such damages as will compensate him for such injury. Compensatory damages embraces loss of time, expenses resulting from the injury, bodily pain, and the mental anguish caused thereby, the extent of the injury, and its probable duration, the nature and extent of the plaintiff's business and the effect of the injury in incapaciating him to conduct that or any other business by which he could earn a support.

If you find the defendant is liable for the plaintiff's injury and that it is probably permanent and of a character to disable him from pursuing his trade as a mechanic, or doing any kind of work by which he could earn a support, then, in considering the question of damages resulting from these facts, the age of the plaintiff is a material consideration.

56 An able-bodied man twenty-five or thirty years of age who should receive a physical injury which, without impairing his general health, would permanently disable him from pursuing his vocation or earning a living, would obviously be entitled to greater damages than he would if he was thirty or forty years older.

The allowance for support in such case must be proportioned to the probable duration of the life of the injured person.

Beyond the expenses incurred for medical aid and attendants, the amounts of which have been proven, the law leaves the amount of damages to your sound judgments, reasonably, fairly, and dispassionately exercised.

The law is unable to furnish you with any definite rule to measure the damages.

Counsel for plaintiff told you that you might find a verdict for the plaintiff for any sum from one cent to $25,000. This is true in one sense. You have the power to render a verdict for one cent or for $25,000, but a verdict for either of these sums would

57 obviously be a false verdict; for if the plaintiff is entitled to a verdict at all, and upon this point you will probably have no difficulty, as the evidence clearly shows negligence and consequent liability on the defendant, though this is a question of fact exclusively within your province to determine—I say, if the plaintiff is entitled to a verdict at all, he is entitled to recover more than one cent, and it is equally clear that $25,000 would be greatly in excess of what he ought to receive. When the law leaves it to your

discretion to fix the amount of damages it does not invest you with a despotic power, to be exercised without regard to what is fair, reasonable, and just. The power you have is the duty to fix the damages at a sum which your judgment and consciences, under the solemn obligations of your oaths, tells you is fair and just to both parties, in view of all the facts in the case.

If you should give more or less than this you would violate
58 your duty and your verdict would be false.

I desire to call your attention to another thing. The defendant is a corporation — railroad company, but you must not let that fact either enhance or diminish the amount of your verdict in the slightest degree.

The plaintiff is entitled to a reasonable compensation for his injuries, and whether they were the result of the negligence of the agents of a corporation or a natural person can have no bearing in determining what that compensation shall be.

Your verdict should be precisely what it would be if the defendant was a natural person who had incurred the same liability.

And the defendant having excepted at the time to the following portion of the said charge, asked and obtained leave to save the same by his bill of exceptions, which is accordingly done.

59 The portion of said charge excepted to is as follows, to wit: "Counsel for plaintiff told you that you might find a verdict for plaintiff for any sum from one cent to $25,000. This is true in one sense. You have the power to render a verdict for one cent or for $25,000, but a verdict for either of these sums would obviously be a false verdict; for if the plaintiff is entitled to a verdict at all, and upon this point, you will probably have no difficulty, as the evidence clearly shows negligence and consequent liability on the defendant, though this is a question of fact exclusively within your province to determine—I say, if plaintiff is entitled to a verdict at all, he is entitled to recover more than one cent, and it is equally clear that $25,000 would be greatly in excess of what he ought to recover." * * * "The plaintiff is entitled to a reasonable compensation for his injuries, and whether they were the result of the negligence of the agent of a corporation or a natural person,
60 can have no bearing in determining what that compensation shall be."

And to save said exceptions the said defendant at the time asked leave to prepare and present its bill of exceptions herein any day during the present term of this court, which was granted.

And now, on this 25th day of June, 1884, and during the same term aforesaid, the said defendant presents here this its bill of exceptions, which, being examined and found correct, is signed and sealed and ordered to be filed as a part of the record herein.

HENRY C. CALDWELL, [SEAL.]
District Judge.

Endorsed: Filed June 25, 1884. Ralph L. Goodrich, clerk.

And on June 27, 1884, the following proceedings were had, to wit:

61 E. R. VICKERS

v.

ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY.

Comes the defendant, by Dodge & Johnson, Esqs., its attorneys, and files herein its supersedeas bond, which is approved by the court, and also citation and writ of error, which are allowed by the court. Which supersedeas bond is as follows:

Bond.

Know all men by these presents that we, The St. Louis, Iron Mountain and Southern Railway Company and John D. Adams, Dean Adams, W. P. Homan, & J. H. McCarthy, are held and firmly bound unto Elias R. Vickers in the full and just sum of seven thousand (7,000) dollars, to be paid to the said Elias R. Vickers' certain attorney, executors, administrators, or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

62 Sealed with our seals and dated this — day of June, in the year of our Lord one thousand eight hundred & eighty-four.

Whereas lately at a term of the circuit court of the United States for the eastern district of Arkansas, in a suit depending in said court between the said Elias R. Vickers, plaintiff, and the St. Louis, Iron Mountain, and Southern Railway Company, defendant, judgment was rendered against the said railway company, defendant; and the said St. Louis, Iron Mountain & Southern Railway Company having obtained a writ of error, and filed a copy thereof in the clerk's office of the said court, to reverse the judgment in the aforesaid suit, and a citation directed to the said Elias R. Vickers, citing and admonishing — to be and appear at a Supreme Court of the United States to be holden at Washington the first Monday of October next:

Now, the condition of the above obligation is such that if The St. Louis, Iron Mountain and Southern Railway Company shall

63 prosecute its writ of error to effect and answer all damages and costs if it shall fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

THE ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY, [SEAL.]

By DODGE AND JOHNSON,

Its Attorneys of Record.

JNO. D. ADAMS. [SEAL.]

DEAN ADAMS. [SEAL.]

W. P. HOMAN. [SEAL.]

J. H. McCARTHY. [SEAL.]

Sealed and delivered in the presence of—
J. E. ISBELL.

This bond is approved, to operate as a supersedeas, June 27, 1884.
HENRY C. CALDWELL,
District Judge.

Endorsed: Filed June 27, 1884. Ralph L. Goodrich, clerk.

Which citation is as follows:

64 UNITED STATES OF AMERICA:

Circuit Court of the U. S. for East'n District of Arkansas.

E. R. VICKERS *vs.* ST. L., I. M. & S. R'Y CO.

The United States of America to E. R. Vickers, plaintiff, or his attorney of record, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the eastern district of Arkansas, wherein The St. Louis, Iron Mountain & Southern Railway Company — plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Henry C. Caldwell, judge of the district court, this 25th day of June, A. D. 1884.

HENRY C. CALDWELL,
District Judge.

Service of the above citation is acknowledged this 26th day of June, 1884.

F. W. COMPTON,
Attorney for E. R. Vickers.

[Endorsed:] E. R. Vickers *vs.* St. L., I. M. & S. R'y Co. Citation.

65 UNITED STATES OF AMERICA, *Eastern District of Arkansas*:

I, Ralph L. Goodrich, clerk of the circuit court of the United States for the eastern district of Arkansas, in the eighth circuit, hereby certify that the foregoing writings annexed to this certificate are true, correct, and compared copies of the original remaining of record in my office.

In witness whereof I have hereunto set my hand and the seal of said court this 30th day of July, in the year of our Lord one thou-

sand eight hundredand eighty-four, and of the Independence of the United States of America the one hundred and ninth.

[The Seal of the Circuit Court, Arkansas District, U. S. A.]

RALPH L. GOODRICH, *Clerk*,
By D. P. FIELD, *D. C.*

Endorsed on cover: E. Arkansas C. C. U. S. No. 282. The St. Louis, Iron Mountain and Southern Railway Company, plaintiff in error, *vs.* Elias R. Vickers. Filed 2nd September, 1884.

360
22
FILED
APR 28 1887
JAMES H. McKENNEY,
CLERK.

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1886.

No. 282.

THE ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY,

Plaintiff in Error,

against

ELIAS R. VICKERS.

BRIEF FOR PLAINTIFF IN ERROR.

JOHN F. DILLON,
Attorney for Plaintiff in Error.

BURGOYNE'S "QUICK" PRINT, COR. WALKER AND CENTRE STS., N. Y.

Supreme Court of the United States.

THE ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY,
Plaintiff in Error,

AGAINST

ELIAS R. VICKERS.

No. 282.

BRIEF FOR PLAINTIFF IN ERROR.

Statement.

The writ of error brings up for review a judgment (entered upon a verdict of a jury at the Circuit) for $6,000 damages for personal injuries sustained by Vickers, the plaintiff below, while a passenger on a mixed passenger and freight train of the St. Louis, Iron Mountain and Southern Railway Company, the defendant below.

The injuries to the plaintiff are alleged in the complaint to have been caused by the negligence of the defendant's employees in violently projecting a locomotive and one or more freight cars against the forward one of several cars, in the rear one of which was the coach in

which plaintiff was a passenger. This occurred during the process of shifting cars at a place known as Barham's Station in Oachita County, Arkansas. It is alleged that the plaintiff was passing from the closet to his seat, and that the shock of the collision precipitated him upon the floor of the car with the result of the injuries of which he complains.

The defendant answered, denying any negligence on its part or on the part of its employees, and charging the plaintiff with contributory negligence.

The case was tried before a jury. It was shown in evidence that a violent storm was in progress at the time when the plaintiff received his injuries. The testimony conflicted materially as to the violence of the shock in the attempted coupling, as to whether it was extraordinary or not of unusual violence; as to the position of the plaintiff at the time the coupling was made; whether he had just left the closet and was returning to his seat, or had been for some minutes standing in the aisle and looking out the rear door. There were also other points of conflict in the testimony.

Assignments of Error.

1. The Court erred in instructing the jury as follows:

"Counsel for the plaintiff told you that you might find a verdict for plaintiff for any sum from one cent to $25,000. This is true in one sense. You have the power to render a verdict for one cent or for $25,000, but a verdict for either of these sums would obviously be a false verdict, for if the plaintiff is entitled to a verdict at all, *and upon this point you will probably have no difficulty, as the evidence clearly shows negligence and consequent liability on the defendant,* though

this is a question of fact exclusively within your province to determine—I say, if plaintiff is entitled to a verdict at all he is entitled to recover more than one cent, and it is equally clear that $25,000 would be greatly in excess of what he ought to recover."

2. The Court erred in instructing the jury as follows:

"*The plaintiff is entitled* to a reasonable compensation for his injuries, and whether they were the result of the negligence of an agent of a corporation or a natural person, can have no bearing in determining what that compensation shall be."

Argument.

The Constitution of Arkansas (Art. VII, Sec. 23), provides:

"Judges shall not charge juries with regard to matters of fact, but shall declare the law, and in jury trials shall reduce their charge or instructions to writing on the request of either party."

In this case the matters of fact in issue were the alleged negligence of the defendant and contributory negligence of the plaintiff.

We submit that this constitutional provision should be followed by the Federal Courts sitting as Courts of common law in the State of Arkansas; and that this case is to be distinguished from Nudd vs. Burrows, 91 U. S., 426, and Indianapolis R. R. vs. Horst, 93 U. S., 291.

CHIEF JUSTICE TANEY, delivering the opinion of this Court in Mitchell vs. Harmony, 13 How., 115, said:

"The practice in this respect differs in different States. In some of them the Court neither sums up

the evidence in a charge to the jury nor expresses an opinion upon a question of fact. Its charge is strictly confined to questions of law, leaving the evidence to be discussed by counsel, and the facts to be decided by the jury without commentary or opinion by the Court.

But in most of the States the practice is otherwise; and they have adopted the usage of the English Courts of justice, where the Judge always sums up the evidence, and points out the conclusions which in his opinion ought to be drawn from it; submitting them, however, to the consideration and judgment of the jury.

It is not necessary to inquire which of these modes of proceeding most conduces to the purposes of justice. It is sufficient to say that either of them may be adopted under the laws of Congress. *And as it is desirable that the practice in the Courts of the United States should conform as nearly as practicable to that of the State in which they are sitting, that mode of proceeding is perhaps to be preferred which, from long established usage and practice, has become the law of the Courts of the State.*"

It is submitted that the Act of Congress of June 1, 1872 (17 Stat., 197, Sec. 5) should be construed in harmony with this decision.

It has been repeatedly held in Arkansas that it is error to assume, in the instructions to the jury, the existence of the facts in issue.

Montgomery vs. Erwin, 24 Ark., 540.
Floyd vs. Ricks, 14 *Id.*, 286.
State Bank vs. McGuire, 14 *Id.*, 537.
Atkins vs. State, 16 *Id.*, 593.
Armistead vs. Brooke, 18 *Id.*, 526.
Burr vs. Williams, 20 *Id.*, 172.

And that an instruction should not be given which intimates to the jury the opinion of the Court as to the weight of the evidence.

Randolph vs. McCain, Adrm., 34 Ark., 696.

The practice of the Federal Courts, though sanctioning a somewhat greater latitude, will not be found to justify the instructions to which exception has been taken. By these instructions the jury were in effect advised to dismiss from consideration the evidence of contributory negligence, and to assume the sufficiency of other evidence to prove the negligence of the defendant. They were not instructed that there was *no* evidence exonerating the defendant from the charge of negligence—the fact in this respect was left to the jury with a peremptory expression as to the sufficiency of the evidence to show negligence. If the question were a proper one for the jury, it should have been submitted to them without what was equivalent to a judicial finding as to the sufficiency of the evidence.

"Whether there be any evidence is a question for the Judge; whether there be sufficient evidence is for the jury."

Chandler vs. Von Roeder, 24 How., 227.
Company, &c., vs. Haywood, Doug., 375.
Jewell vs. Parr, 13 C. B., 909.

When the Court decides on the sufficiency of the testimony it "usurps the province of the jury * * * in violation of the well established principle that the law is referred to the Court, the fact to the jury."

CHIEF-JUSTICE MARSHALL, in Scott vs. Lloyd, 9 Pet., 445.

In the case of Richardson vs. Boston, 19 How., 268, MR. JUSTICE GRIER said:

"If there be '*no evidence* whatever' * * * it is the duty of the Court to give such peremptory instruction. But if there be *some* evidence tending to support the averment, its value must be submitted to the jury with proper instructions from the Court. If this

were not so, the Court might usurp the decision of facts altogether, *and make the verdict but an echo of their opinions.*"

See also :

Otis vs. Watkins, 9 Cranch, 339.
Schuchardt vs. Allens, 1 Wall., 359.
Mut. Ins. Co. vs. Snyder, 93 U. S., 393.

In Chesapeake and Ohio Can. Co. vs. Knapp, 9 Pet., 541, MR. JUSTICE MCLEAN, delivering the opinion of this Court, said :

" The Court ought not to instruct, and indeed cannot instruct, on the sufficiency of evidence ; but no instruction should be given, except upon evidence in the case. Where there is evidence on the point, the Court may be called on to instruct the jury as to the law, but it is for them to determine on the effect of the evidence."

In the present case there was evidence showing or tending to show that the plaintiff had been standing at the rear open door of the coach looking out, and was so standing when the coupling was made.

Testimony Marion Lee Ramsay, Record, fol. 43.
Robert White, fol. 51.
Charles White, fol. 52.

The sufficiency of this evidence to show contributory negligence should have been left to the jury.

R. R. Co. vs. Pollard, 22 Wall., 341.
Stokes vs. Saltonstall, 13 Pet., 181.

Upon the question of the defendant's alleged negligence much testimony—materially conflicting—had been taken to show whether or not ordinary methods and precautions were used ; to show the mixed character of the train, the state of the elements, the plain-

tiff's familiarity with the conditions subject to which he was traveling, and the ordinary or unusual character of the event of which he complains. Upon this evidence the Court pursued the *form* of leaving the question of negligence to the jury, but in effect foreclosed their consideration of it.

The instruction "imposed an obligation upon the jury to find" for the plaintiff, and is of the character animadverted upon by MR. JUSTICE STORY, in delivering the opinion of this Court in McLanihan vs. The Universal Ins. Co., 1 Pet., 182.

We submit that no authority can be found, either in principle, or in any of the cases which construe liberally the functions of the court in instructing the jury, which will justify imperative and controlling expressions from the Court upon the only facts in issue (the consideration of which is not withdrawn from them) and which, in effect, leave to the jury only the assessment of damages. Instructions of this character are especially to be deprecated when they have the effect of encouraging an unfortunate but proverbial tendency of juries to find the fact against a corporate defendant.

The Court should especially refrain from so trenching upon the province of the jury as to relieve them from restraints which are already much too lightly felt in cases of this character.

JOHN F. DILLON,
Attorney for Plaintiff in Error.

April 27, '87.—75.

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IN THE

Supreme Court of the United States.

THE ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY, Plaintiff in error,

vs.

ELIAS R. VICKERS, Defendant.

Brief for Defendant in Error.

MITCHELL & BETTIS PRINTERS, LITTLE ROCK

IN THE

Supreme Court of the United States.

The St. Louis, Iron Mountain and Southern Railway Company, Plaintiff in error,

vs.

Elias R. Vickers, Defendant.

Brief for Defendant in Error.

The suit in this case was brought by the defendant in error to recover damages for an injury he received while traveling as a passenger on the train of the plaintiff in error.

But one exception was taken in the Court below; and that was to a part of the charge to the jury, which raises the only question presented to this Court upon the record.

The entire charge is as follows:

"The plaintiff while traveling as a passenger on the defendant's train was injured. To recover compensation for such injury this suit is brought.

1. Before the plaintiff can recover he must satisfy you that the injury of which he complains was caused by the negligence of the defendant's agents and employes,

but if the injury occurred while the plaintiff was a passenger on the defendant's train and while he was in the exercise of ordinary care, which is that degree of care that a person of reasonable prudence and intelligence would exercise under like circumstances or in a like situation, then the injury to the plaintiff under such circumstances is *prima facie* evidence of negligence on the part of the defendant, which renders it liable. In such case the plaintiff is not required to show by what particular act of misconduct or negligence on the part of the defendant the injury occurred.

2. The plaintiff had a right to leave his seat to go to the water closet as occasion required, whether the train was standing still or in motion, and if the injury complained of was received while the plaintiff was returning from the water closet and while he was in the exercise of ordinary care and prudence, then the defendant is liable, unless it has shown you affirmatively that there was no misconduct or mismanagement or negligence on the part of the defendant's agents conducting the train.

3. If you are satisfied from the evidence that the plaintiff was not guilty of any negligence and that the injury was the result of bringing the cars together with unusual force and violence for the purpose of coupling them, the defendant is liable.

This is not a case in which the jury can give vindictive or exemplary damages, or, as it is sometimes called "smart money." If you find the defendant is liable for the injury

the plaintiff received, you can only allow him such damages as will compensate him for such injury. Compensatory damages embrace loss of time, expenses resulting from the injury, bodily pain, and the mental anguish caused thereby, the extent of the injury, and its probable duration, the nature and extent of the plaintiff's business and the effect of the injury in incapacitating him to conduct that or any other business by which he could earn a support.

If you find the defendant is liable for the plaintiff's injury and that it is probably permanent and of a character to disable him from pursuing his trade as a mechanic, or doing any kind of work by which he could earn a support, then, in considering the question of damages resulting from these facts, the age of the plaintiff is a material consideration. An able bodied man twenty-five or thirty years of age who should receive a physical injury which, without impairing his general health, would permanently disable him from pursuing his vocation or earning a living, would obviously be entitled to greater damages than he would if he was thirty or forty years older. The allowance for support in such case must be proportioned to the probable duration of the life of the injured person.

Beyond the expenses incurred for medical aid and attendants, the amounts of which have been proven, the law leaves the amount of damages to your sound judgments, reasonably, fairly, and dispassionately exercised. The law is unable to furnish you with any definite rule to measure the damages.

Counsel for plaintiff told you that you might find a verdict for the plaintiff for any sum from one cent to $25,000. This is true in one sense. You have the power to render a verdict for one cent or for $25,000, but a verdict for either of these sums would obviously be a false verdict; for if the plaintiff is entitled to a verdict at all, and upon this point you will probably have no difficulty, as the evidence clearly shows negligence and consequent liability on the defendant, though this is a question of fact exclusively within your province to determine. I say, if the plaintiff is entitled to a verdict at all, he is entitled to recover more than one cent, and it is equally clear that $25,000 would be greatly in excess of what he ought to receive. When the law leaves it to your discretion to fix the amount of damages it does not invest you with a despotic power, to be exercised without regard to what is fair, reasonable, and just. The power you have is the duty to fix the damages at a sum which your judgment and consciences, under the solemn obligations of your oaths, tell you is fair and just to both parties, in view of all the facts in the case. If you should give more or less than this you would violate your duty and your verdict would be false.

I desire to call your attention to another thing. The defendant is a corporation—railroad company—but you must not let that fact either enhance or diminish the amount of your verdict in the slightest degree. The plaintiff is entitled to a reasonable compensation for his injuries, and whether they were the result of the negligence of the agents of a corporation, or a natural person, can have no

bearing in determining what that compensation shall be. Your verdict should be precisely what it would be if the defendant was a natural person who had incurred the same liability."

That part of the charge to which exception was taken is the following:

"Counsel for the plaintiff told you that you might find a verdict for plaintiff for any sum from one cent to $25,000. This is true in one sense. You have the power to render a verdict for one cent or for $25,000, but a verdict for either of these sums would obviously be a false verdict; for if the plaintiff is entitled to a verdict at all, and upon this point you will probably have no difficulty, as the evidence clearly shows negligence and consequent liability on the defendant, though this is a question of fact exclusively within your province to determine. I say, if plaintiff is entitled to a verdict at all, he is entitled to recover more than one cent, and it is equally clear that $25,000 would be greatly in excess of what he ought to recover. * * * The plaintiff is entitled to reasonable compensation for his injuries, and whether they were the result of the negligence of the agent of a corporation, or natural person, can have no bearing in determining what that compensation shall be."

As to the question of negligence, it is only necessary to say that the instructions given the jury are in accordance with the principles decided by this Court in *Stokes v. Saltonstall, 13 Pet., 181*, and approved in *Railroad v. Pollard, 22 Wall., 341.*

And to the particular part of the charge to which exception was taken it is not easy to perceive, especially when it is considered in the light of the testimony, any ground of objection that can be successfully urged. It cannot be regarded as an invasion of the province of the jury; for, although the Court intimated that the evidence clearly established negligence on the part of the plaintiff in error, yet, it was *expressly* left to the jury to determine that fact, as being exclusively in their province. So, as to damages: Although the jury were told that a verdict for one cent or for $25,000 would be incorrect, the Court nevertheless, in another part of the charge, properly instructed the jury as to all the elements entering into the question of damages, and left it to them to determine what the amount should be.

But even if it be conceded that these intimations controlled the jury, they furnish no ground for reversal; because, while there is no testimony whatever tending to show a want of the exercise of ordinary care and prudence on the part of the defendant in error, the evidence as to the negligence of the employes of the Railway Company, is abundant and conclusive; and the evidence also clearly and satisfactorily shows that a verdict either for one cent or for $25,000 would have been improper. (*See the testimony, Record pp. 30 to 53*). The Court was justified by the evidence in saying what was said touching these matters of fact; and acted consistently with the rule repeatedly announced by this Court, "that the jury may be controlled in their determination of a question, by a peremptory instruc-

tion, if the testimony is of such a conclusive character as would compel the Court, in the exercise of a sound legal discretion, to set aside a verdict, if one were returned, in opposition to such testimony."

Montclair v. Dana, 97 U. S., 162.

It is insisted that the charge, taken altogether, was proper, under the circumstances, and is certainly not erroneous.

Respectfully submitted.

F. W. COMPTON.

Attorney for defendant in error.